

**Precision Electric and Michael J. Hodges, an Individual charged with derivative liability and International Brotherhood of Electrical Workers, Local Union 441, International Brotherhood of Electrical Workers, AFL-CIO. Cases 21-CA-28931 and 21-CA-28937**

January 31, 1996

**SUPPLEMENTAL DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND COHEN

On April 11, 1994, the National Labor Relations Board issued an Order adopting, in the absence of exceptions, the decision of Administrative Law Judge Gordon J. Myatt directing Respondent Precision Electric, its officers, agents, successors, and assigns, to, among other things, make whole Gregg Durand and Donald Short for any loss of earnings and benefits resulting from the discrimination against them in violation of the National Labor Relations Act. On October 28, 1994, the United States Court of Appeals for the Ninth Circuit entered its judgment enforcing the Board's Order.

A controversy having arisen over the liabilities under the Board's Order, on June 22, 1995, the Regional Director for Region 21 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order and that both Respondent Precision Electric and its owner and president, Michael J. Hodges, are liable for that amount, and notifying both Respondents that they should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondents failed to file an answer.

By letter dated September 22, 1995, the Region advised the Respondents that no answer to the compliance specification had been received and that unless an appropriate answer was filed by close of business on September 29, 1995, summary judgment would be sought. The Respondents filed no answer.

On December 4, 1995, the General Counsel filed with the Board a Motion for Summary Judgment, with exhibits attached. On December 6, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents again filed no

response. The allegations in the motion and in the compliance specification are therefore undisputed.

**Ruling on Motion for Summary Judgment**

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file an answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondents, despite having been advised of the filing requirements, have failed to file an answer to the compliance specification. In the absence of good cause being shown for the Respondents' failure to file an answer,<sup>1</sup> we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net backpay due discriminatees Durand and Short is as stated in the compliance specification and we will order payment by the Respondents of those amounts to the discriminatees, plus interest accrued on the amounts to the date of payment.

**Findings of Fact**

At all material times, Respondent Precision has been owned by Michael J. Hodges, a sole proprietorship, doing business as Precision Electric. At all material times, Hodges has held the position of president of Precision, has been a supervisor and agent of Precision within the meaning of Section 2(11) and (13) of the Act, and has exercised complete management and financial control of Precision. Further, the unfair labor practices committed by Precision were found to have been committed by Hodges, as the owner of Precision.

<sup>1</sup> Although the motion indicates that both the compliance specification and the September 22 reminder letter that were sent to the Respondents by certified mail were returned to the Regional Office marked "refused," the Respondents' failure or refusal to claim certified mail cannot defeat the purposes of the Act. *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

Based on the foregoing, we find that Hodges, as owner, president, and sole proprietor of Precision, is derivatively liable for remedying the unfair labor practices herein,<sup>2</sup> and that Respondents Precision and Hodges are individually and collectively liable for the backpay due the discriminatees.

#### ORDER

The National Labor Relations Board orders that the Respondents, Precision Electric and Michael J.

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<sup>2</sup>See, e.g., *Twin City Sign Service*, 310 NLRB 523 (1993); and *Wayne Electric*, 241 NLRB 1056 (1979).

Hodges, Huntington Beach, California, their officers, agents, successors, and assigns, shall make whole the individuals named below by paying them the amounts following their names, plus interest to be computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and minus tax withholdings required by Federal and state laws:

Gregg Durand	\$ 685.20
Donald Short	1,366.80
TOTAL:	\$2,052.00